

Public Hearing Questions for
Board of Law Examiners
Created by Section 23-1-101, *Tennessee Code Annotated*
(Sunset termination June 30, 2014)

1. Provide a brief introduction to the board, including information about its purpose, statutory duties, staff, and administrative attachment.

The Tennessee Board of Law Examiners (TBLE) was created by Section 23-1-101, *Tennessee Code Annotated*, to assist the judiciary as part of the judicial branch of government. The TBLE governs the examination and licensing of attorneys who wish to practice law in Tennessee, the licensing of attorneys previously licensed in another jurisdiction for more than 5 years (comity admission), and the registration of attorneys licensed in another jurisdiction employed by an organization (in-house counsel). The TBLE certifies to the supreme court the names of all applicants who are eligible for admission. Eligibility is determined by a passing score on the bar examination or, in the case of a comity applicant, sufficient time in the practice of law under a license in another jurisdiction, and in all cases, a determination by the TBLE that the applicant possesses the character and fitness necessary for the practice of law. The exam is given twice a year (February and July). Additionally, the TBLE is responsible for approval of law schools not accredited by the American Bar Association.

The TBLE consists of five members, 1 from the Western Division and 2 each from the Middle and Eastern Divisions of the State. Administrative office staff includes a full time Executive Director and three full time staff assistants. Additional staff includes twelve Assistants to the Board, who write and grade the essay questions for the bar examinations.

2. Provide a list of current members of the board. For each member please indicate who appointed the member, how the member's presence on the board complies with Section 23-1-101, *Tennessee Code Annotated*, and the member's county of principal residence. Please indicate each member's race and gender and which members, if any, are 60 years of age or older.

Name: Scott McGinness, President
County of Residence: Hamilton
Race: Caucasian
Sex: Male
Over 60? Yes
Term: 01/01/2011 – 12/31/2014
Qualifications: Licensed Tennessee attorney
Appointed By: Supreme Court

Name: Julian Bibb, Vice-President
County of Residence: Williamson
Race: Caucasian
Sex: Male
Over 60? Yes
Term: 01/01/2010 – 12/31/2013
Qualifications: Licensed Tennessee attorney
Appointed By: Supreme Court

Name: Ricky Wilkins, Secretary-Treasurer
County of Residence: Shelby
Race: African American
Sex: Male
Over 60? No
Term: 01/01/2010 – 12/31/2013
Qualifications: Licensed Tennessee attorney
Appointed By: Supreme Court

Name: Jimmie Miller
County of Residence: Washington
Race: Caucasian
Sex: Female
Over 60? No
Term: 01/01/2010 – 12/31/2013
Qualifications: Licensed Tennessee attorney
Appointed By: Supreme Court

Name: William L. "Bill" Harbison
County of Residence: Davidson
Race: Caucasian
Sex: Male
Over 60? No
Term: 01/01/2013 – 12/31/2016
Qualifications: Licensed Tennessee attorney
Appointed By: Supreme Court

3. How many times did the board meet in fiscal year 2012 and to date for 2013, and how many members were present at each meeting?

The Board meets nine times each year, either in person at the BLE office in Nashville or by telephone. In September, 2012, a new Executive Director was hired. Records of attendance for meetings prior to October, 2012, do not include the names of the members present. However, for the Board to proceed with a meeting, at least three members must be present. In Fiscal Year 2012, meetings with a quorum were held in July, August, October, December, January,

February, March and April. For Fiscal Year 2013, attendance was as follows:

July 12 and 13, 2012: no attendance records but the meeting was held in Nashville with no one participating by telephone

August 9, 2012: no attendance records but the meeting was held in Nashville with no one participating by telephone

October 12, 2012: all members were present for the meeting; no one participated by telephone

December 6 and 7, 2012: four (4) members were present for the meeting; no one participated by telephone

January 7, 2013: two (2) members were present for the meeting; two (2) members participated by telephone

February 4, 2013: all members participated in the meeting by telephone

March 11, 2013: three (3) members participated in the meeting by telephone

April 12, 2013: four (4) members were present for the meeting; no one participated by telephone.

June 3, 2013: four (4) members participated in the meeting by telephone

4. What per diem or travel reimbursement do members receive? How much was paid to board members during fiscal year 2012 and to date for 2013?

TBLE members receive reimbursement for mileage, meals and incidentals at per diem rates, and actual cost paid for accommodations. For Fiscal Year 2012 through the end of May, 2013, members received reimbursement in the aggregate amount of \$7678.00.

5. What were the board's revenues (by source) and expenditures (by object) for fiscal year 2012 and to date for 2013? Does the board carry a fund balance and, if so, what is the total of that fund balance? If expenditures exceeded revenues, and the board does not carry a fund balance, what was the source of the revenue for the excess expenditures?

Please refer to the attached spreadsheet.

6. What reports does the board prepare on its operations, activities, and accomplishments, and who receives these reports?

The TBLE produces statistical reports following each bar examination that are provided to the law schools and posted on the website for the public at large. Additionally, we report to the National Conference of Bar Examiners regarding the

number of applicants taking the examination and any accommodations for non-standard testing that have been provided.

7. How many applications for examination did the board receive during fiscal year 2012 and to date for 2013? How many applicants took the examination and how many passed the examination?

Exam	Applicants	Withdrawn	Taking	Passing
Jul-11	769	16	753	550
Feb-12	345	38	307	182
TOTAL FY 2012	1114	54	1060	732
Jul-12	826	140	686	503
Feb-13	385	59	326	193
TOTAL FY 2012	1211	199	1012	696

8. How often and in what geographic locations are examinations held? Briefly describe the examination and how it is developed.

The bar examination is held twice each year, the last Tuesday and Wednesday of February and July. In July, 2012, the examination was held in Knoxville, Nashville and Memphis, as required by § 23-1-103, *Tennessee Code Annotated*. In February, 2013, the examination was held in Knoxville, Murfreesboro (as provided by Tennessee Supreme Court Rule 7) and Memphis. For FY 2013, the February, 2014, examination will be held in Murfreesboro only because there are not enough applicants to justify the expense of testing in all three locations. In July, 2013, the examination will be in Knoxville, Nashville and Memphis.

The Tennessee Bar Examination consists of the Multistate Bar Examination (MBE) and the Multistate Performance Test (MPT), both developed by the National Conference of Bar Examiners (NCBE), plus nine (9) locally written essay questions on legal subject matter specified in Tennessee Supreme Court Rule 7. The purpose of the examination as a whole is to enable applicants to demonstrate to the TBLE that they possess the knowledge, skills and abilities basic to competence in the profession. The essay questions test the examinee's ability to identify legal issues raised by a hypothetical fact situation, separate relevant material from that which is not, present an analysis of the relevant issues in a clear, concise and organized manner, and demonstrate an understanding of the legal principles relevant to the issues raised. The MPT is designed to test an examinee's ability to use fundamental lawyering

skills in a realistic situation, evaluating an examinee's ability to complete a task that a beginning lawyer should be able to accomplish. It is not a test of substantive knowledge. Rather, the examinee is required to sort detailed factual materials from irrelevant facts, analyze the statutory, case and administrative materials for applicable law, apply the applicable law, identify and resolve any ethical issues that may be presented, and communicate effectively in writing. The MBE is given to assess the extent to which an examinee can apply fundamental legal principles and legal reasoning to analyze given fact patterns. * In addition to the components of the examination described above, applicants are required to achieve a passing score on the Multistate Professional Responsibility Examination (MPRE), administered by the Law School Admission Council. The MPRE tests an examinee's knowledge of the professional rules of conduct.

(*Test objectives for the MPT and MBE are provided by the NCBE)

9. Describe the board's process for determining whether applicants are "of such reputation and character as to be likely to contribute to upholding the high standards of the legal profession." Is this determination made before applicants are approved to take the examination or after they have passed the examination? How many applicants were certified to the Supreme Court during fiscal year 2012 and to date for 2013?

The TBLE requires each applicant by examination or comity to undergo a background investigation conducted by the NCBE. In addition to the background investigation, applicants by examination are required to participate in an in-person interview with a member of the bar who serves on a District Investigatory Committee. Prior to the interview, the executive director has completed a preliminary review of each applicant's file that is forwarded to a board member for approval or further action. Any deficiencies or areas which need additional investigation are noted for the interviewer. After the interview, the board members review the recommendations of the interviewer. Any applicants that are not recommended for admission or, although recommended, the members of the board doubt meet the standards, are issued orders to show cause and appear before the board at a hearing to determine character and fitness. In some cases, the applicant is referred to the Tennessee Lawyer's Assistance Program (TLAP) for assessment.

In fiscal year 2012, 733 applicants by examination were certified to the Supreme Court as eligible; 167 by applicants by comity were certified as eligible and 22 In-House Counsel applicants were registered. At the time this report was prepared, in fiscal year 2013,

686 applicants by examination and 171 applicants by comity have been certified, and 25 In-House Counsel applicants have been registered.

10. How does the board ensure that its members and staff are operating in an impartial manner and that there are no conflicts of interest? If the board operates under a formal conflict of interest policy, please attach a copy of that policy.

The TBLE does not have a formal conflict of interest policy. However, members of the board and staff acknowledge when they know an applicant. Board members do not participate in decisions regarding applicants they know when they believe it will create a conflict. Staff members do not have access to files or documents pertaining to anyone with whom they have a conflict.

Additionally, applicants by examination are assigned an Exam Identification number at random on the day of the examination. This is the only identifier on exam papers and used for grading so that grading is anonymous and impartial. Until grades are released, names and grades are not matched.

11. Describe the board's relationship/interactions with the Board of Professional Responsibility.

The staff of the TBLE works with the staff of the BPR on a daily basis. Applicants certified for licensing are directed to the BPR for registration prior to the issuance of the license and administering of the oath. Our offices coordinate the registration, oath and licensing process to ensure that no applicant misses any steps in the process.

In addition to the daily interaction of the staff, the TBLE assists when possible with any investigation of attorney conduct that may include information reported to the TBLE in the application process. The TBLE further works with the BPR in matters of conditional licensing of applicants who are subject to monitoring by TLAP.

12. Describe any items related to the board that require legislative attention and your proposed legislative changes.

The TBLE is not aware of any legislative changes that need to be addressed.

13. Should the board be continued? To what extent and in what ways would the absence of the board affect the public health, safety, or welfare?

The Board of Law Examiners should be continued. Through its inherent authority to regulate courts, the Supreme Court controls admission to the practice of law. The Court relies on the TBLE to implement the rules and procedures, facilitate the examination, conduct investigations, and monitor law schools located in the state and to report to the Court on these matters. The TBLE protects the public welfare by ensuring that lawyers licensed and practicing in Tennessee meet a threshold of knowledge, ability, character and fitness before admission to the bar. Failure to require standards for bar admission would subject the public to harm through ineptitude and malfeasance.

14. Please list all board programs or activities that receive federal financial assistance and, therefore are required to comply with Title VI of the Civil Rights Act of 1964. Include the amount of federal funding received by program/activity.

[Federal financial assistance includes:

- (1) Grants and loans of Federal funds,
- (2) The grant or donation of Federal Property and interests in property,
- (3) The detail of Federal personnel,
- (4) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and
- (5) Any federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

28 C.F.R. Sec. 42.102(c)]

[The term recipient means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program, including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

28 C.F.R. Sec. 42.102(f)]

*If the board does receive federal assistance, please answer questions 16 through 23.
If the board does not receive federal assistance, proceed directly to question 22.*

Not applicable.

16. Does your board prepare a Title VI plan? If yes, please provide a copy of the most recent plan.
17. Does your board have a Title VI coordinator? If yes, please provide the Title VI coordinator's name and phone number and a brief description of his/her duties. If not, provide the name and phone number of the person responsible for dealing with Title VI issues.
18. To which state or federal agency (if any) does your board report concerning Title VI? Please describe the information your board submits to the state or federal government and/or provide a copy of the most recent report submitted.
19. Describe your board's actions to ensure that board staff and clients/program participants understand the requirements of Title VI.
20. Describe your board's actions to ensure it is meeting Title VI requirements. Specifically, describe any board monitoring or tracking activities related to Title VI, and how frequently these activities occur.
21. Please describe the board's procedures for handling Title VI complaints. Has your board received any Title VI-related complaints during the past two years? If yes, please describe each complaint, how each complaint was investigated, and how each complaint was resolved (or, if not yet resolved, the complaint's current status).
22. Please provide a breakdown of current board staff by title, ethnicity, and gender.

Position Title	Gender		Ethnicity	
	M	F	Caucasian	African Am
Assistants	7	5	10	2
Executive Dir	0	1	1	
Staff Assistants	0	3	3	
Totals	7	9	14	2

23. Please list all board contracts, detailing each contractor, the services provided, the amount of the contract, and the ethnicity of the contractor/business owner. N/A

****DRAFT - FOR DISCUSSION PURPOSES ONLY

Tennessee Board of Law Examiners
Fiscal Year-to-Date Thru 6/30/13
Preliminary

	Budget 2012-13	YTD 6/30/2013	Remaining Balance	Percent Remaining
Income:				
Exam Fees	\$ 729,200.00	\$ 786,485.00	(57,285.00)	
Interdepartmental Revenue		\$ -	-	
Current Services Revenue		\$ 280.00	280.00	
Total Income	\$ 729,200.00	\$ 786,765.00	\$ (57,565.00)	
Expenditures:				
Salaries & Wages	\$ 363,800.00	\$ 374,318.02	(10,518.02)	-2.89%
Employee Benefits	\$ 118,800.00	\$ 86,495.24	32,304.76	27.19%
Total Salaries and Benefits	\$ 482,600.00	\$ 460,813.26	21,786.74	4.51%
Travel	\$ 14,000.00	\$ 10,670.16	3,329.84	23.78%
Printing, Duplicating, and Film Processing	\$ 22,000.00	\$ 81,774.03	(59,774.03)	-271.70%
Utilities and Fuel	\$ -	\$ -	-	
Communication and Shipping Costs	\$ 24,300.00	\$ 6,976.10	17,323.90	71.29%
Maintenance, Repairs and Services Performed by Others	\$ 500.00	\$ 2,268.00	(1,768.00)	-353.60%
Professional and Administrative Services-Third Parties	\$ 82,400.00	\$ 68,039.22	14,360.78	17.43%
Supplies	\$ 8,500.00	\$ 15,905.00	(7,405.00)	-87.12%
Rentals and Insurance	\$ 61,800.00	\$ 103,302.04	(41,502.04)	-67.16%
Motor Vehicle Operation	\$ -	\$ -	-	
Awards and Indemnities	\$ -	\$ -	-	
Grants and Subsidies	\$ 100.00	\$ -	100.00	100.00%
Interest Payments	\$ -	\$ -	-	
Equipment	\$ -	\$ 15,000.00	(15,000.00)	
Training for State Employees	\$ -	\$ 12,805.00	(12,805.00)	
Computer Related Items	\$ -	\$ 8,706.53	(8,706.53)	
Professional Services Performed by Other State Agencies	\$ 33,000.00	\$ 46,706.18	(13,706.18)	-41.53%
Total Other Expenditures	\$ 246,600.00	\$ 372,152.26	(125,552.26)	-50.91%
Total Expenditures	\$ 729,200.00	\$ 832,965.52	(103,765.52)	-14.23%
Total Income Over(under) Expenditures		\$ (46,200.52)		
Previous Fund Balance		\$ 703,143.60		
Projected Fund Balance as of 6/30/13		\$ 656,943.08		